

Application Serial No.: 09/965,854
Kurt A. Zarefoss et al.
Preliminary Amendment in Response to Office Action mailed
4/3/2006

REMARKS

The subject patent application has been transferred to the law firm of Quarles & Brady. The undersigned attorney has assumed responsibility for prosecution of the subject application.

The Office Action inquires as to inventorship of the subject application. As the Examiner is aware, inventorship is difficult to determine at the provisional stage as the claimed invention has not been articulated, i.e. the claims have not yet been written. The inventorship question is typically confirmed at the non-provisional stage. In discussions with the assignee of record and named co-inventors, the undersigned attorney has determined that the inventorship as set forth on the declaration for the subject non-provisional patent application is correct. Applicants submit that the invention is consistent between the provisional application and non-provisional application.

The Office Action rejects claims 1-6, 9-12, 18-20, 22, 25-28, 34-39, 42-45, 51-54, 57-58, 60, 63-65, 70-71, and 75-76 under 35 U.S.C. 103(a) as being unpatentable over US patent application 2002/0069096 (Lindoefer) in view of Applicant's admitted prior art Networks/Collaborate. The Office Action further rejects claims 7, 13-14, 21, 23, 29-30, 40, 47, 55-56, 59, 61, 66-67, 72-73, and 77-78 under 35 U.S.C. 103(a) as being unpatentable over Lindoefer in view of Applicant's admitted prior art Networks/Collaborate and US patent 6301621 (Haverstock). The Office Action further rejects claims 8, 15-17, 24, 31-33, 41, 48-50, 62, 68-69, 74, 79, and 80 under 35

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U.S.C. 103(a) as being unpatentable over Lindoerfer in view of Applicant's admitted prior art Networks/Collaborate and US patent 5930156 (Kennedy).

Applicants respectfully traverse the grounds of the present 103 rejection. First, Applicants submit that the Lindoerfer patent application 2002/0069096 does not qualify as prior art, in totality of its published form, with respect to the subject application. Lindoerfer was published June 6, 2002, based on a non-provisional patent application filed June 22, 2001. The Lindoerfer non-provisional application claims priority to provisional application 60/250,507 ('507 provisional), filed December 4, 2000 and provisional application 60/213,324 ('324 provisional), filed June 22, 2000.

As the Examiner well knows, it is common in patent prosecution, and is true for Lindoerfer, for the non-provisional to contain substantially different information than the underlying provisional application. The non-provisional has the right to claim priority to the provisional only to the extent that the provisional supports the disclosure of the non-provisional. With respect to content of the Lindoerfer published application, Applicants acknowledge that it should be given an effective date as prior art of at least June 22, 2001. For any portion of the Lindoerfer published application to be given an effective date before June 22, 2001, the relevant sections of the published application must be supported by the underlying provisional application(s).

The subject non-provisional application claims priority to provisional application 60/236,379, filed September 29, 2000. Applicants believe that the claimed features in its non-

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provisional application are properly supported by the '379 provisional application. Accordingly, the effective filing date of the subject non-provisional application, as supported by the provisional application, is September 29, 2000. The effective filing date of the subject non-provisional application is prior to the actual filing date of Lindoerfer's non-provisional application and prior to the filing date of the '507 provisional.

As for the '324 provisional, Applicants maintain that the present invention was fully conceived and reduced to practice before the filing date of the '324 provisional. Applicants submitted an affidavit under 37 C.F.R. 1.131 to that effect on March 7, 2006. Applicants understand that the Examiner has discounted the affidavit as failing to provide sufficient evidence of conception and reduction to practice of the invention prior to the cited references. Applicants respectfully disagree. Aside from the minor notes about dates, the affidavit clearly states that the invention was conceived and reduced to practice between November of 1999 and May of 2000:

"[s]pecifically, between January and May of 2000, we created and coded the software tool implementing claim invention. Then between May 2000 and October 2000, we tested the tool to identify and correct errors in the software."

The software existed in sufficient form to test in May of 2000, which is prior to the '324 provisional. It is a clear statement that "between January and May of 2000, we created and coded the software tool implementing claim invention." The testing dates were noted only to show that the software was

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indeed developed by May of 2000. Software cannot be tested until it is developed, i.e. conceived and reduced to practice. Contrary to the Examiner's statements, the invention was continuously worked between November of 1999 and January of 2000, with the Functional Specification last edited on January 13, 2000. Subsequent to January 13, 2000, the development team diligently continued reducing the invention to practice resulting in the software code ready to test by May of 2000, see page 2 of the 131 affidavit. In the context of a major software development project, the time frame from November 1999 to May 2000 is certainly reasonable in terms of being continuous (and actually quite short in software development time). As for the amount of detail submitted to the Examiner in the 131 affidavit, Applicants were in part attempting to avoid overburdening the Examiner. Applicants did not submit the voluminous source code (several thousand printed pages) that existed as of May 2000 with the affidavit, as the Functional Specification, along with Mr. Kennedy's sworn statement that the software tool implementing the claim invention had been coded, was believed to be sufficient.

To respond to the Examiner's noted deficiencies, the effective date of the Lindoerfer reference is June 22, 2000 only to the extent that it is supported by the '324 provisional. Applicants submit there has been substantial text added to the Lindoerfer published application which would not be entitled to the June 22, 2000 priority date. Nonetheless, the differences are not relevant as the subject invention was conceived and reduced to practice before the '324 provisional. The Attachment A is copyrighted 1997 and last updated January 13, 2000. The

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Functional Specification clearly has origins back to 1997, but was updated (to include the present invention) by January 13, 2000. Applicants are not aware of any other names for the product. The priority date of the subject application is September 29, 2000. The date on Attachment B is September 18, 2000.

The Examiner inquires into the non-patent literature entitled "Manugistics Aims for Rebound." This document refers to product release 6.0. The present invention is part of release 6.1, see page 2 of the 131 affidavit. To Applicants' knowledge, the present invention was not on-sale for more than one year prior to the filing of the provisional application.

With respect to the pending claims, Applicants have cancelled claims 2-80, which renders the 103 rejection of those claims moot. In furtherance of the prosecution of the subject application to allowance, Applicants have amended claim 1 to recite a computer implemented method for sharing and manipulating supply chain planning data comprising the steps of creating a central database for storing and sharing planning data, providing an attribute module made selectively available to a plurality of users in the supply chain, the attribute module having access to the central database for assigning user-defined attributes to the planning data, providing a hierarchy module made selectively available to the plurality of users in the supply chain, the hierarchy module having access to the central database for creating a hierarchy based on the user-defined attributes, providing a manipulation module made selectively available to the plurality of users in the supply chain, the manipulation module having access to the central

database for manipulating the supply chain planning data by aggregating the planning data in accordance with the hierarchy to produce aggregated planning data, and providing a calendar module made selectively available to the plurality of users in the supply chain, the calendar module having access to the central database for organizing and incrementing the planning data according to a customized calendar.

None of the prior art references of record teach or suggest the combination of providing an attribute module, hierarchy module, manipulation module, and calendar module. Each module is made selectively available to a plurality of users in the supply chain and having the features as recited in amended claim 1.

Accordingly, claim 1 is believed to patentably distinguish over the prior art of record.

Applicants have added new claims 81-114.

Claims 81-91 are believed to be in condition for allowance as each is dependent from an allowable base claim.

New claim 92 recites a computer implemented method for sharing supply chain planning data comprising creating a central database for storing and sharing planning data, providing an attribute module made selectively available to a plurality of users in the supply chain, the attribute module having access to the central database for assigning attributes to the planning data, providing a hierarchy module made selectively available to the plurality of users in the supply chain, the hierarchy module having access to the central database for creating a hierarchy based on the attributes, and providing a manipulation module made selectively available to the plurality of users in the

supply chain, the manipulation module having access to the central database for manipulating the supply chain planning data by aggregating the planning data in accordance with the hierarchy to produce aggregated planning data.

None of the prior art references of record teach or suggest the combination of providing an attribute module, hierarchy module, and manipulation module. Each module is made selectively available to a plurality of users in the supply chain and having the features as recited in claim 92.

Accordingly, claim 92 is believed to patentably distinguish over the prior art of record. Claims 93-104 are believed to be in condition for allowance as each is dependent from an allowable base claim.

New claim 105 recites a computer program product usable with a programmable computer processor having a computer readable program code embodied therein comprising computer readable program code which creates a central database for storing and sharing planning data, implements an attribute module made selectively available to a plurality of users in the supply chain, the attribute module having access to the central database for assigning attributes to the planning data, implements a hierarchy module made selectively available to the plurality of users in the supply chain, the hierarchy module having access to the central database for creating a hierarchy based on the attributes, and implements a manipulation module made selectively available to the plurality of users in the supply chain, the manipulation module having access to the central database for manipulating the supply chain planning data

by aggregating the planning data in accordance with the hierarchy to produce aggregated planning data.

None of the prior art references of record teach or suggest the combination of computer readable program code which implements an attribute module, hierarchy module, and manipulation module. Each module is made selectively available to a plurality of users in the supply chain and having the features as recited in claim 105.

Accordingly, claim 105 is believed to patentably distinguish over the prior art of record. Claims 106-108 are believed to be in condition for allowance as each is dependent from an allowable base claim.

New claim 109 recites a computer system for sharing supply chain planning data comprising means for creating a central database for storing and sharing planning data, means for providing an attribute module made selectively available to a plurality of users in the supply chain, the attribute module having access to the central database for assigning attributes to the planning data, means for providing a hierarchy module made selectively available to the plurality of users in the supply chain, the hierarchy module having access to the central database for creating a hierarchy based on the attributes, and means for providing a manipulation module made selectively available to the plurality of users in the supply chain, the manipulation module having access to the central database for manipulating the supply chain planning data by aggregating the planning data in accordance with the hierarchy to produce aggregated planning data.

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None of the prior art references of record teach or suggest the combination of means for providing an attribute module, hierarchy module, and manipulation module. Each module is made selectively available to a plurality of users in the supply chain and having the features as recited in claim 109.

Accordingly, claim 109 is believed to patentably distinguish over the prior art of record. Claims 110-114 are believed to be in condition for allowance as each is dependent from an allowable base claim.

Applicant(s) believe that all information and requirements for the application have been provided to the USPTO. If there are matters that can be discussed by telephone to further the prosecution of the Application, Applicant(s) invite the Examiner to call the undersigned attorney at the Examiner's convenience.

The Commissioner is hereby authorized to charge any fees due with this Response to U.S. PTO Account No. 17-0055.

Respectfully submitted,
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October 3, 2006

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